

Iowa Department of Natural Resources
Environmental Protection Commission

ITEM

10

DECISION

TOPIC **Notice of Intended – Chapter 134 – Certification of Groundwater
Professionals and Underground Storage Tank (UST) Compliance
Inspectors**

The department is requesting permission to proceed with the rulemaking process and publish a Notice of Intended Action to amend Chapter 134, Underground Storage Tank (UST) Licensing and Certification Programs. The rules were previously presented for information at the January Commission meeting.

The Commission adopted the UST Fund Board's existing UST installer and installer inspector licensing rules by emergency rule making in July, 2007. These revised rules are required to fully implement a licensing program applicable not only to UST installers and installer inspectors but persons who remove and test USTs.

The amended rules are mainly a reorganization of the rules adopted from the UST Fund Board. Some key rule changes are noted in the preamble of the Notice of Intended Action. During the stakeholder meetings, the main concern was the requirement of licensed UST Professionals to directly notify the department of any suspected release instead of only notifying the UST owner or operator who in turn is supposed to notify the department.

Wayne Gieselman
Administrator
Environmental Protection Division

January, 2009

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission proposes to amend Chapter 134, "Underground Storage Tank Licensing and Certification Programs," Iowa Administrative Code.

The Department is rescinding 567 I.A.C. 134, Part C and replacing it with a new Part C titled Licensing of UST Professionals. Pursuant to 2007 Iowa Acts, S.F., 499, section 10, the Environmental Protection Commission (Commission) adopted the existing Iowa Comprehensive Petroleum Underground Storage Tank Board (Board) rules found in 591 I.A.C. Chapter 15 by emergency rulemaking. These rules pertained to the licensing of underground storage tank (UST) installers, installer-inspectors, testers, and liners. Pursuant to the Act, the Board's licensing authority is transferred to the Commission, and the emergency rulemaking discussed above effectuated that transition.

No substantive changes were made to the rules during the emergency rulemaking adoption. However, Section 6 of the Act authorizes the Commission to expand the UST professional licensing scheme to include adding a licensing program for individuals providing services in the permanent closure of UST systems ("removers"). The new Part C contains the following changes and additions:

- Addition of licensing scheme for UST removers and require that soil and groundwater sampling at UST closure be performed by a Certified Groundwater Professional.
- Required insurance liability coverage for UST professionals is being raised from \$250,000 to \$1,000,000. This coverage amount was required through legislation in 2007 and reflects the industry standard.
- Clarifications on what type of work must be performed by a licensed professional versus service technicians and when an installation inspection is required.
- Requirement for installation inspections using Departmental-authorized checklist with submittal for review.

- An increase of the licensing fee for companies and individuals to \$200 biennially (currently it is \$50/yr).
- Expands the reciprocity criteria (recognizing training and exams from other states or equipment manufacturers – on a Department-approval basis)
- Adds a duty for UST professionals to report suspected and confirmed releases (currently only the UST owner/operator must report).
- Clarification on conflict-of-interest activities.
- Cathodic Protection Tester must be trained and maintain certification with the National Association of Corrosion Engineers (NACE), the Steel Tank Institute (STI) or equivalent certification approved by the department.

The Department has already held two stakeholder meetings in Des Moines to reach the current draft of the rules. Written and oral comments were received. The stakeholders' main concerns were on the duty to report, with secondary focus being on the dynamic between licensed Removers and Certified Groundwater Professionals during the UST system closure process.

Stakeholders expressed concern that imposing a duty to report suspected or confirmed releases to the Department would jeopardize the professional relationship between UST professionals and the regulated public (their clients), especially in regards to payment. Once a suspected release is reported, Department rules require an investigation to determine whether a release has in fact occurred; specifically, where and how. Not wanting to be seen as “responsible” for these financial costs, the stakeholders preferred that the owners and operators make all reports to the Department personally, which is how the rule currently reads. However, the Department believes such reports should be made directly by the professionals trained in the field. This ensures an accurate and timely report is made to the benefit of public health and the environment. Indeed, this position is why a majority of states surveyed on-point have a like-minded rule in place.

Discussions have also focused heavily on the role Removers will play at UST closures compared to Certified Groundwater Professionals (CGWPs). Removers will perform the technical aspects of closure; meaning, required digging, grading, demolition work, the physical removal of the tanks themselves, etc., whereas CGWPs will oversee soil and groundwater sample collection and lab submittal, etc. Certainly one individual can hold both licenses and perform all necessary work, but the Department sees benefit in having these duties divided between two categories.

The other changes to the rule were non-controversial. Stakeholders recognize the legitimacy of raising the licensing fee to reflect inflation since the original \$50/year fee was imposed in 1991. The proposed

licensing fee is the same as the fee for becoming a Certified Groundwater Professional. The same economic principle applies to the sought-after increase in insurance. Revisions to the continuing legal education and testing requirements have also been generally supported, especially in light of the Department's willingness to reciprocate with neighboring states so long as the programs are similar enough to justify an Iowa license.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 9, 2009. Such written materials should be directed to the Tom Collins, Underground Storage Tank Section, Department of Natural Resources, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895 or e-mail tom.collins@dnr.iowa.gov.

Three public hearings will be held at 1:00 p.m. at the following locations at which time persons may present their views either orally or in writing.

Thursday April 2, 2009 - Wallace State Office Bldg., 502 E 9th St, 5th Floor Conference Room
West, 502 E 9th St, Des Moines, IA

Monday, April 6, 2009 - Coralville Public Library, Meeting Room B, 1401 5th St, Coralville, IA

Tuesday, April 7, 2009 – Denison Public Meeting Room, 111 N Main St, Denison, IA

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code sections 455B.474.

The following amendments are proposed.

ITEM 1: Change the title of Part C to LICENSING OF UST PROFESSIONALS

ITEM 2: Amend sub-rule 134.17 by amending and adding the following definitions:

567—134.17(455B) Definitions. As used herein:

“Cathodic Protection Tester” means a licensed individual who provides installation, maintenance and testing services on underground storage tank corrosion protection systems.

“Inspector”“Installation-inspector” means a licensed individual who is engaged in the inspection and approval of the installation of underground storage tank systems.

“Install or Installation” means the physical construction of an UST system, including, but not limited to, activities such as excavating, backfilling, testing, placement of the tank, underground piping, release detection devices, corrosion protection systems, spill and overfill devices and any associated administrative activities such as notifications, record keeping and record submissions.

“Installer” means a licensed individual or company engaged in the installation of a new underground storage tank system or the upgrading or lining of existing of underground storage tank systems.

“Liner” means a licensed company or an individual who lines a tank using an acceptable procedure under subrule 134.24(2) provides services to install underground storage tank lining and repair underground storage tanks

“Maintenance” means minor service work to existing equipment, associated with underground storage tank systems, which is installed above grade level and can be observed from grade level. Maintenance does not require licensing .the normal operational upkeep to prevent an UST system from releasing a regulated substance or to ensure that a release is detected.

“Modification” means to change an UST system currently in use by the installation of new UST system components. This includes, but is not limited to, the addition of corrosion protection to a previously-lined tank, installation of new underground piping or replacement of existing underground piping, changing the primary release detection method to one of the methods listed in OAR 340-150-0450 through 340-150-0470, or adding secondary containment. “Modification” does not include those activities defined as “repair” or “replacement.”

“Remover” means a licensed individual who is engaged in the permanent closure by removal or filling-in place of underground storage tank systems in accordance with 567–135.17(455B).

“Repair” means modification or correction of any existing portion of an underground storage tank system through such means as replacement of valves, fill pipes, vents, liquid level monitoring systems, and installation of spill and overfill devices, provided the activity occurs above grade, and the maintenance and inspection of the efficacy of cathodic protection devices. Repair does not include activities which are maintenance as defined in this chapter to restore any portion of an UST system that has failed, but does not include the activities defined by “modification” or “replacement.”

“Replacement” means to effect a change in any part of an UST system above-grade by exchanging one unit for a like or similar unit, but does not include activities defined as “repair” or “modification.”

“Service Technician” means a non-licensed individual who works for a licensed individual, a licensed company, or is certified by a manufacturer to conduct modification or replacement activities at UST facilities.

“Tester” means a licensed company or individual who tests tanks, lines, leak detection systems, or monitoring systems, using an acceptable procedure under subrule 134.23(2) as required by Department rules in chapter 567-135(455B) and this chapter. For the purposes of this definition, an owner, operator or one of their employees performing vapor monitoring, cathodic protection tests, statistical inventory reconciliation or using an automated in-tank gauging device installed at a site location they own or operate shall not be defined as a tester. An owner or operator or one of their employees may also perform

volumetric, nonvolumetric or vacuum tests on their own tanks and hydrostatic pressure tests on their own lines, provided they have received certification from the manufacturer or supplier of the system for its usage and the system has been approved by the U.S. EPA. leak detection or cathodic protection monitoring, as required by Department rules in chapter 567-135(455B) is not a tester.

“Underground Storage Tank Professional” means an individual licensed under this part.

ITEM 3: Rescind sub-rules 134.18 through 134.28 and replace with the following:

567–134.18(455B) Applicability of Part C. All persons and companies that are currently licensed under the former Board rules in 591–Chapter 15 shall be subject to Part C of this chapter. All persons conducting underground storage tank installations and installation-inspections as provided in 567–subparagraph 135.3(1)(e)(2) and installers, installer-inspectors, liners, testers, and removers shall be licensed by the department in accordance with this chapter. Service technicians as defined in 567–134.17 are exempted from licensure under this part.

567—134.19(455B) General Licensing requirements. Applications for licenses shall be on a form provided by the department along with all required supporting documentation. Existing licenses as of the effective date of these rules and new licenses shall expire December 31, 2010. Subsequently, licenses shall be issued and renewed on a two-year calendar basis, beginning January 1, 2011. All applicants must be at least 18 years of age. The applicant shall not have been issued a certificate of noncompliance from the child support recovery unit.

134.19(1) Licensing Classifications. A separate license will be issued for (1) UST installers and installation-inspectors; (2) UST removers; (3) UST testers; (4) cathodic protection testers; and (5) UST liners.

134.19(2) Individual and Company Licenses. Companies employing licensed individuals for installation, upgrading, removal, lining or testing of underground storage tank systems shall be registered as a “licensed company.” A company shall lose its license if it fails to employ at least one licensed individual or if it employs unlicensed individuals to do work requiring a license. Individuals who are not companies as defined, see 134.17, need only have an individual license.

134.19(3) License Fees. A \$200 fee must be submitted with all Company and Individual license applications. Individuals may apply for multiple individual licenses at once, paying only one \$200 processing fee. A “company license” is not an “individual license,” see 567–124.20(2). All fees are nonrefundable.

134.19(4) License Issuance. Upon receipt, review, and acceptance of the application and application fee, the department shall furnish the applicant with a license showing the name of the individual/company and the expiration date. In order to remain valid, the license must be renewed prior to the expiration date specified on the certificate.

134.19(5) Environmental Liability Insurance. All license holders, to include licensed companies, are required to have environmental liability insurance with minimum liability of \$1,000,000 per occurrence, as well as in the aggregate. Current licenses have 45 days to upgrade upon issuance of these rules.

a. Licensed company. A licensed company is required to provide environmental liability insurance for all licensed activities of the company and its licensed UST professionals.

b. Licensed Individuals. Each licensed installer, remover, liner, cathodic protection tester, tester, and installation-inspector is required to provide proof of environmental liability insurance covering licensed activities. The insurance may be provided by the licensed company employing the individual, or by the individual licensee.

c. Insurance Exception. UST Professionals employed by owners or operators of underground storage tank systems to work only on the owner/operator's private system(s), are exempted from insurance requirements.

d. Forms of acceptable insurance. All parties covered by the licensing provisions of this chapter shall provide evidence of environmental liability insurance to the department upon request.

(1) Environmental liability insurance may be provided by a private insurer authorized to do business in Iowa.

(2) Evidence of environmental liability insurance may be provided using methods of self-insurance as outlined in 567—Chapter 136.

134.19(6) Examinations and Course of Instruction. Prior to the issuance of a license as an installer, remover, liner, tester, cathodic protection tester, or installation-inspector, the applicant shall successfully complete a department or department-approved course of instruction and pass a qualification examination approved by the department.

a. Examination requirements for all license holders.

(1) A passing grade of not less than 85 percent is required on the Iowa examination.

(2) Candidates who have failed the examination may not perform work unless supervised by an appropriately-licensed individual.

(3) A fee reflecting the actual costs of developing and administering each course of instruction and examination shall be charged.

(4) Nothing herein shall limit the right of the department to require additional educational requirements of license holders.

b. Exceptions on completion of the course of instruction or examination. All license holders are required to complete the course of instruction except (1) cathodic protection testers, who are only required to maintain NACE certification, Steel Tank Institute Cathodic Protection certification or equivalent certification approved by the department. Testers may qualify for reciprocity under subparagraph (c) below if the department approves the public or private certification or training program completed. For testers, the department will approve or deny the certification based upon a review of the course of instruction, applicable manuals and handouts, and the examination.

c. Reciprocity. Persons who are certified under another state or federal regulatory program which has been approved by the department may be eligible for licensure in the State without having to take a course of instruction or pass the examination. However, these individuals must still pay the \$200 application fee and qualify for license renewal by fulfilling continuing education requirements.

d. Repeat Examination Attempts. An applicant who fails an initial examination may take a second examination within one calendar year without having to re-take the course of instruction. Failure of the second examination will result in termination of the application. A person may reapply for licensure. The applicant must complete a course of instruction before retaking the certification examination.

134.19(7) Continuing education. Each person licensed under this part shall complete a refresher course every two years approved by the department, except for those who are licensed only as cathodic protection testers, who shall maintain NACE or Steel Tank Institute certification or another certification approved by the department. Beginning with the first application for certificate renewal, each UST professional shall provide evidence to the department that at least twelve (12) credit hours of department-approved continuing education have been satisfactorily completed since the last license was issued or renewed and prior to submission of the application for renewal. The department may limit the number of credits granted for similar courses during a renewal period. The requirement for continuing education may be met only by those continuing education offerings which have been approved by the department.

a. Such approval may take the form of:

1. program approval granted by the department to the sponsor or instructor of a continuing education offering;
2. Individual requests for credit granted by the department to an installer or inspector for a continuing education offering whose sponsor or instructor did not seek program approval; or
3. Blanket approval granted by the department to continuing education offerings sponsored by the department or other professional organizations whose standards have been approved by the department.

b. Procedures for Department Approval of Continuing Education Offerings.

1. Application for program approval must be made by the sponsor or instructor to the department and include an agenda or an outline of the content of the proposed offering.
 2. Application must be made at least 45 days prior to the desired effective date of approval
 3. The application must be reviewed by the department, and notice of approval or denial of program approval shall be sent to the sponsor or instructor. Credit hours may be limited by the department based on program content.
- c. Proof of Participation. A certificate of satisfactory completion of a department-approved continuing education offering issued by the sponsor or instructor constitutes sufficient evidence of such satisfactory completion for purposes of meeting the continuing education requirement.

567—134.20(455B) License Renewal Procedures.

a. Renewal applications must be made on a form provided by the department and received by the department or postmarked no later than November 1st of the license-at-issue's expiration year. The renewal application must be accompanied by the \$200 renewal fee as specified in 567-134.19(3)(455B) and proof of environmental insurance as required under 567-134.19(5)(455B). Applications received after the November 1st deadline, but before the January 1st expiration date will be accepted, but require an additional \$50 late fee.

b. Renewal Requirements. To be eligible for renewal, all continuing education requirements must be fulfilled, along with any other requirements set forth in each license classification section under this part. The department will consider all past disciplinary actions against the licensee when evaluating renewal eligibility.

567—134.21(455B) Conflict of Interest. A licensed individual or a licensed company may not conduct an UST installation-inspection at any facility at which the licensee engaged in professional services which are regulated under this part; e.g., installations, modifications, repairs, or replacements of UST systems.

Persons working for a licensed company as an installer, liner, remover, or tester may only provide services as an installation-inspector on sites that are being installed or lined by their prior employer six months after leaving the licensed company.

If a licensed individual leaves the employment of a licensed company, the licensed company shall notify the department within 30 days of that occurrence.

567—134.22(455B) Duty to report. Any UST Professional licensed under this part has a duty to report suspected and confirmed releases to the owner/operator of the UST site and to the department.

567–134.23(455B) OSHA safety requirements. All licensed individuals and companies regulated under this chapter will conduct their work as required by OSHA safety requirements defined under 29 C.F.R. § 1910 (2006). OSHA standards apply whenever flammable, combustible or hazardous materials are present, especially during the following activities:

- a. Excavating, placing underground storage tank systems in excavations, and ballasting underground storage tank systems with flammable, combustible, or hazardous materials.
- b. Purging, cleaning, and removal of underground storage tank systems which have contained flammable, combustible, or hazardous materials.
- c. Testing as a part of an installation or after the system has been placed in service.

567—134.24(455B) Installers.

134.24(1) Licensure Qualifications. Installers of underground storage tank systems shall apply for a license as an installer and shall indicate on the license application the types of installations and upgrade procedures they use. In addition to the licensing requirements listed under 567-134.19(455B), installers must: (1) provide documentation of at least two years of relevant experience, (2) provide documentation of manufacturer certification for past installations and proof of current certification for future work covering, but not limited to: tank systems, piping systems, leak detection and monitoring systems, and corrosion protection systems, and (3) have completed at least 40 hours of OSHA training.

134.24(2) Renewal Qualifications. To be eligible for license renewal, installers must: (1) fulfill the department's continuing education requirements in 567–134.19(455B), (2) maintain manufacturer certification where available, notifying the department within 30 days if it is ever lost, and (3) complete the annual 8-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) refresher course.

134.24(3) Responsibilities of installers. A licensed installer shall be on site during the performance of all work, including subcontracted work, for which the owner/operator has contracted to have completed by the installer. The licensed installer is responsible for all UST-related work at the site and must ensure that the performance of the work and the finished work conform to industry standards and codes and manufacturers' requirements. The licensed installer is responsible for ensuring all local installation permits and notice requirements are satisfied. Tank installation includes all work associated with the placement of the tanks, pipes, pumps, dispensers, gauging systems, monitoring systems, corrosion protection, containment devices, and ancillary systems which, if installed incorrectly, could cause or delay detection of a leak. This specifically includes excavation, equipment placement, backfilling, piping, electrical work, testing calibration, and start-up. Tank installation work also includes installing the appropriate equipment to meet the National Emissions Standards for Hazardous Air Pollutants

(NESHAP) requirements (*40 C.F.R. § 63.6580, subpart ZZZZ*), including submerged fill and a vapor balance systems (stage 1 vapor recovery) and the testing of those systems.

Installers shall have on their persons at all times while on an UST job site a 40-hour General Site Worker Program Identification Card or any valid Refresher Cards that comply with OSHA standards.

134.24(4) Documentation of work performed. Installing a new UST system or upgrading an UST system requires submitting a copy of an owner–signed DNR Form 148 to the department. Each licensed installer responsible for the new system installation or the upgrading of an existing system shall sign the DNR Form 148 as required by 567—135.3(3)“e.”

567—134.25(455B) Testers. Testers of underground storage tank systems shall apply for licensing as a tester and note on the license application the systems and method(s) of testing they will use. In addition to the licensing requirements listed under 567-134.19(455B), testers must: (1) provide documentation of at least two years of relevant experience, (2) provide documentation of manufacturer certification for past testing and proof of current certification for future work

134.25(1) Renewal Qualifications. To be eligible for license renewal, testers must: (1) fulfill the department’s continuing education requirements in 567–134.19(455B) and (2) maintain manufacturer certification, notifying the department within 30 days if it is ever lost

134.25(2) Documentation of work performed. A copy of the test results shall be attached to the DNR Form 148 when testing is done in connection with a new installation or the upgrading of an existing underground storage system. A precision test is required when the system is covered and is ready to be placed into service; a volumetric, non-volumetric, or vacuum test may be used as a method for testing the system and a hydrostatic pressure test may be used for testing the lines. Systems used for leak detection or monitoring – such as statistical inventory reconciliation, vapor or water monitoring wells, or tracer type tests – shall not be acceptable as a precision test at the completion of the installation of a new or upgrading of an existing system. Automatic in–tank gauging may be acceptable if third–party U.S. EPA approval as a precision test has been received for testing tanks.

a. The test results shall identify the tanks tested, the test method employed, the results of the test, and shall be dated and signed by the licensed tester performing the tests.

b. The original DNR Form 148 without attachments shall be mailed to the department.

c. Installation-inspectors are not required for testing underground storage tank systems, lines, leak detection, and cathodic protection as required by 567—Chapter 135 after the system has been put into service.

567—134.26(455B) Liners. In addition to the licensing requirements listed under 567-134.19(455B), Liners must: (1) provide documentation of at least two years of relevant experience, (2) provide documentation of manufacturer certification for past linings and proof of current certification for future work, and (3) have completed at least 40 hours of OSHA training.

134.26(1) Renewal Qualifications. To be eligible for license renewal, liners must: (1) fulfill the department's continuing education requirements in 567—134.19(455B), (2) maintain manufacturer certification, immediately notifying the department if it is ever lost, and (3) complete the annual 8-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) refresher course.

134.26(2) Lining system investigation and installation requirements.

a. A steel underground storage tank that satisfies the corrosion protection requirement as set forth in Chapter 135.3(2)“b”(1) by the addition of an internal lining must be internally inspected within 10 years of the date the tank was lined and every 5 years thereafter. The purpose of the inspection is to determine if the lining continues to perform according to the manufacturer's specifications, state and federal rules, and national standards and codes and to determine if the tank is still structurally sound. The department accepts both manned entry and video camera periodic inspections. The lining method employed must be specifically designed for the purpose, compatible with the product stored, and meet acceptable federal and state standards as set forth in 567-Chapter 135.

b. Integrity testing for tanks. Liners shall verify structural integrity, to include thickness and strength of the underground storage tanks, whenever tanks are physically entered (manned entry) for periodic inspections.

The following standards must be used for lining periodic inspections and integrity testing:

- i. Physical (manned entry) inspection: American Petroleum Institute (API) Standard 1631: Interior Lining and Periodic Inspection of Underground Storage Tanks.
- ii. Video camera inspection: (1) API Standard 1631; (2) Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera developed by Ken Wilcox Associates Inc. (KWA), Methods A and C; and ASTM G-158 (approved prediction models).
- iii. Repairs to lining: Standard 631 of the National Leak Prevention Association (NLPA): Entry, Cleaning, Interior Inspection, Repair and Lining of Underground Storage Tanks. Repaired lining must meet the requirements of API 1631, § 8.
- iv. Documentation of the inspection: API 1631 – Form C: Tank Re-Inspection Affidavit.

Liners shall document any defects noted in the system, to include but not limited to, holes and perforations. Liners shall document via a report using standard API 1631—Form C: Tank Re-Inspection Affidavit and photographs all methods of repair.

134.26(3) Responsibilities of Liners. Liners shall have on their persons at all times while on an UST job site a 40-hour General Site Worker Program Identification Card or any valid Refresher Cards that comply with OSHA standards.

134.26(4) Documentation of work performed. Liners shall submit the API 1631 report form to the department, certifying all work was performed in accordance with applicable industry standards.

567—134.27(455B) Installation-inspectors. In addition to the licensing requirements listed under 567-134.19(455B), installation-inspectors must: (1) provide documentation of at least one year of experience with underground storage installations, testing, inspecting, or design and (2) documentation of manufacturer certification for past work and proof of current certification for future work. Engineers that have met requirements in Iowa to be a registered professional engineer (P.E.) may be exempt from the educational requirement so long as UST installation is in the scope of their P.E. license and regular practice as provided for in rule 567-134.19(455B); however, engineers are never exempt from fulfilling the examination requirement.

134.27(1) Renewal Qualifications. To be eligible for license renewal, installation-inspectors must: (1) fulfill the department's continuing education requirements in 567-134.19(455B) and (2) maintain manufacturer certification, notifying the department within 30 days if it is ever lost.

134.27(2) Documentation of work performed.

a. A copy of the inspection report must be submitted within 14 days after the inspection is complete. Both the inspection form and the DNR Form 148 must be received before the UST system can be activated.

b. A licensed installation-inspector shall inspect the job site a minimum of three times during the course of the new tank installation or system upgrade.

c. New installations shall have one of the inspections take place prior to placing the UST system in the ground. The second inspection shall occur before the covering of the system, when all tanks and pipes are exposed. The inspector shall witness testing of the primary and secondary piping and testing of the secondary containment, including sumps, under dispenser containment, and secondary containment leak detection equipment. The final inspection shall take place when all systems are operational and the system has been covered, but shall occur prior to actual operation. The installer-inspector shall be present on site and visually observe all inspections and be able to attest to the results. A video or other recording device showing the work completed by the installer shall not be used nor shall it be an acceptable method of providing independent inspection of the work completed.

134.27(3) Inspection Required. When concrete is cut or excavation is required that could affect the integrity or operation of the UST system or when a component that routinely contains product is

installed, replaced or repaired, one inspection is required. This inspection must occur when the component is uncovered and replaced or repaired but before operation recommences . . . Whenever secondary containment is installed, such as UDC or sump, at least one inspection is required after the equipment is installed and before it is backfilled. .

134.27(4) *Inspection Not Required.* Replacing, repairing or installing the following do not require an inspection: drop tubes, overfill devices, spill buckets, installation of ATG systems , dispensers, submersible turbine pumps , automatic line leak detectors, internal periodic lining inspections or lining repair, cathodic protection systems, interstitial sensors, flex connectors , line and tank tightness testing.

134.27(5) *Pre-Work Notification Requirement.*

a. A licensed company/individual hired by an owner/operator to perform work must notify the owner/operator's licensed installation-inspector of choice prior to commencing work. Additionally, the owner/operator is responsible for supplying the name of the installation-inspector if it is not a governmental entity to any state or local agency with rules affecting installations or upgrades.

b. The pre-work notice given to the installation-inspector shall include, at a minimum, the following information:

- i. Description of the work planned.
- ii. The licensed individual responsible for the work to be performed.
- iii. A schedule of the work to be performed.
- iv. A copy of the UST notification of intent to install form submitted to the department.

The installation-inspector shall review the work plan, and any required changes by the installation-inspector must be submitted to the company/individual prior to the beginning of the described work. An inspection schedule must be agreed upon before work commences. Changes to the work schedule, to include the inspection schedule, because of weather or unforeseen job-site conditions shall be agreed upon as soon as the extenuating circumstances are recognized.

134.27(6) *Pre-Installation and Installation Checklists.*

a. The licensed company/individual performing work shall submit a "Notification of Intent to Install" form 30 days prior to an installation or upgrade to both the installation-inspector and the department.

b. Installation-inspectors are required to use the department's installation inspection checklist. The installation inspection checklist must be submitted within 14 days following the tank installation-inspection.

134.27(7) *Conflict-of-interest.* In addition to the conflict-of-interest provisions outlined in 567-134.21(455B), the following apply to installation-inspectors:

a. If the installation-inspector establishes a contract to perform inspection services for an owner or operator , or performs more than five inspections per calendar year for any one owner or operator , then the installation-inspector is required to disclose that relationship in writing to the department within 30 days of the fifth inspection.

b. The department may require the owner or operator to seek alternative inspection services for any reason deemed prudent to ensure quality installations.

134.27(8) *Miscellaneous Requirements.* An installation-inspector has the right to keep work from starting or to stop work on a job if standards as outlined herein are not followed by the installer. Furthermore, once an installation-inspector has been placed on a job, that installation-inspector cannot be replaced without the department's approval. Installation-inspectors must verify any local permit and notice requirements are in place .

567-134.28(455B) Removers. In addition to the licensing requirements listed under 567-134.19(455B), removers must: (1) provide documentation of at least two years of removal or other relevant experience and (2) complete at least 40 hours of OSHA training. Engineers that have met requirements in Iowa to be a registered professional engineer (P.E.) may be exempt from the licensure requirements under 567–134.19(455B) so long as UST-related work is in the scope of their P.E. license and regular practice. Engineers are not exempt from fulfilling the examination requirement in 567-134.20(6).

134.28(1) *Renewal Qualifications.* To be eligible for license renewal, removers must: (1) fulfill the department's continuing education requirements in 567–134.19(455B), (2) comply with all local permitting and notice requirements, (3) comply with department-issued UST closure guidance, and (4) complete the annual 8-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) refresher course.

134.28(2) *Responsibilities and Documentation of Work Performed.* A licensed remover shall be on-site during the performance of all UST closure-related work, including subcontracted work, for which the owner/operator has contracted to have completed by the remover. Removers are responsible for ensuring that all work performed complies with the safety requirements of OSHA. Removers shall submit to the department a “notification of closure” form 30 days prior the scheduled removal or fill-in-place as required in 567-135.15(2)(455B). Removers shall submit to the department the “closure report” within 45 days of removal or fill-in-place as required in 567-135.15(3)“e”(455B). Removers shall ensure that all local permits and notice requirements are satisfied. Removers shall have on their persons at all times while on an UST job site a 40-hour General Site Worker Program Identification Cards or any valid Refresher Cards that comply with OSHA standards. Removers may collect soil and groundwater samples

as required by 567–135.15(3) only if they are certified groundwater professionals under Chapter 134, Part A.

ITEM 4: Add new section 134.29:

567–134.29(455B) Disciplinary Actions

567–134.29(1) *General Policy.* It is the policy of the department to enforce standards of professional and ethical conduct which are generally accepted within the professions which qualify person for licensure in Iowa under this part. The department intends to investigate and enforce standards of conduct by licensees which fall within the scope of their professional relationship with the department, their clients, and other state regulatory agencies. The department may impose disciplinary actions which may include, but are not limited to, notice of deficiency; probationary notices; suspension, revocation, and denial of a license. The criteria identified in the 134-30(3) and 30(4) below will be utilized by the department in deciding whether to issue a first-time or renew an already-issued license.

567–134.29(2) *Notice of Deficiency or Probation.* A notice of deficiency or probationary notice shall not be an appealable decision. The recipient of a notice may contest the basis for the notice in writing, and such response shall be made part of the certification record. A person subject to a notice to suspend or revoke a license may appeal the notice as provided in 567–Chapter 7.

567–134.29(3). *Suspension.*

a. The department may suspend the license of any individual or company for good cause for either a single act or omission or repeated acts or omissions. The suspension of a company or individual licensee shall prevent the company or person from engaging in activities for which the license is required. The suspension may require the licensee to take remedial measures intended to correct or prevent future acts or omissions. Good cause includes, but is not limited to:

- i. A violation of these rules.
- ii. Negligent misrepresentation of material facts in a report submitted to the department.
- iii. Incompetence on the part of the licensee as evidenced by errors in the performance of duties and activities for which the license was issued.
- iv. Repeated failure to submit reports of activities to the department or the owner and operator as provided in this chapter.

b. The department may require that the licensee complete a special training program, examination, or other remedial measures sponsored or approved by the department and designed to strengthen the specific weakness in the licensee’s performance of duties as identified in the suspension order.

c. A licensed company or individual shall immediately surrender the applicable license to the department as of the effective date of a suspension order. The department may reinstate the license if it is determined the person has satisfied the terms of the suspension order and the license is not expired.

567–134.29(4) Revocation.

a. The department may revoke the licensee of a company or individual for one or more of the following:

- i. Willful disregard of, or willful or repeated violations of, this chapter or 567-Chapter 135(455B).
- ii. Fraudulent omissions or misstatements of material facts in a report or in other written or oral communications with the department.
- iii. A knowing and willful failure to detect and report a material violation of UST operation and maintenance standards.
- iv. Acts or omissions warranting suspension after having a license previously suspended.

b. A licensee shall immediately surrender the license after the effective date of the revocation decision.

[Filed emergency 8/28/91—published 9/18/91, effective 8/28/91]

[Filed 2/28/92, Notice 9/18/91—published 3/18/92, effective 4/22/92]

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[Filed emergency 7/6/07—published 8/1/07, effective 7/6/07]

Administrative Rule Fiscal Impact Statement

Date: 01/22/2009

Agency: Iowa Department of Natural Resources

IAC Citation: 567 - Chapter 134

Agency Contact:

Summary of the Rule: The Environmental Protection Commission adopted the UST Fund Board's existing UST installer and installer inspector licensing rules by emergency rule making in July, 2007. These revised rules are required to fully implement a licensing program applicable not only to UST installers and installer inspectors but persons who remove and test USTs.

Fill in this box if the impact meets these criteria:

☒ No Fiscal Impact to the State.

☐ Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.

☐ Fiscal Impact cannot be determined.

Brief Explanation: The rule changes provides reorganization and additional details on how to perform current requirements and should not involve additional expense to the State.

Fill in the form below if the impact does not fit the criteria above:

☐ Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY)</u>	<u>Year 2 (FY)</u>
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL REVENUE	\$0	\$0
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL EXPENDITURES	\$0	\$0
NET IMPACT	\$0	\$0

X This rule is required by State law or Federal mandate.

Please identify the state or federal law:

_____ Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

_____ Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

The rule change increases the licensing fee. Currently the licensing period is 1 year with a \$50 fee. The licensing period is being increased to 2 years with a \$200 fee. The fee has not been increased since 1991. During the stakeholders meetings the change in licensing period and fee increase was not controversial.

The rules now require companies and individuals removing underground storage tank to be licensed and have OSHA training. The required training and licensing fee will be an added expense for these individuals. Those at the stakeholder meetings had no problem with the licensing requirement.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: Paul Nelson

Telephone Number: 515-281-8779